Minute Order Form (06/97)

United States District Court, Northern District of Illinois



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Name of Assigned Judge or Magistrate Judge		James B.	Moran	Sitting Judge if Other than Assigned Judge				
CASE NUMBER 00 C		00 C 1	248	DATE	5/17/20	001		
CASE TITLE			Francorp, Inc. Vs. Mark Siebert et al. indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the					
MOTI	ON:	[In the following box (a) nature of the motion being	indicate the party filig presented.]	ng the motion, e.g., plaintiff, d	efendant, 3rd party plaintiff, a	and (b) state briefly the		
		N	Memorandum (Opinion and Order				
DOCK	ET ENTRY:	<u></u>						
(1)	☐ Filed	motion of [use listing	in "Motion" box	above.]				
(2)	☐ Brief	Brief in support of motion due						
(3)	□ Answ	Answer brief to motion due Reply to answer brief due						
(4)	□ Rulin	g/Hearing ons	set for at					
(5)	☐ Status	Status hearing[held/continued to] [set for/re-set for] on set for at						
(6)	☐ Pretri	Pretrial conference[held/continued to] [set for/re-set for] on set for at						
(7)	☐ Trial							
(8)	□ [Bene	nch/Jury trial] [Hearing] held/continued to at						
(9)	□ This	is case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] FRCP4(m) General Rule 21 FRCP41(a)(1) FRCP41(a)(2).						
(10)	[Other docket entry] Enter Memorandum Opinion and Order. The five individual defendants move for attorneys' fees as prevailing parties respecting plaintiff's contract claims against them. Accordingly, they were not disloyal employees who violated contract terms. They are entitled to fees. It is at this juncture that the requirements of LR 54.3 kick in. The parties are directed now to follow the procedures required by that rule.							
(11)		further detail see orde, advised in open court.	r attached to the c	original influte order.		Document		
	No notices required				number of notices	Number and the second		
	Notices mailed by j				0.4.0001			
	Notified counsel by telephone.				MAY 2 1 2001	02		
\ 	Docketing to mail I		49	ED-T ED FOR DOCKETING	docketing deputy initials	142		
Copy to judge/magistrate judge. courtroom deputy's initials		courtroom	01	MAY 18 AM 10: 28	date mailed notice			
		1 * *	Date	e/time received in ral Clerk's Office	mailing deputy initials			

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

DOCKETED MAY 2 1 2001

FRANCORP, INC.,)
Plaintiff,)
vs.) No. 00 C 1248
MARK SIEBERT, MARK SIEBERT &)
ASSOCIATES, INC., also doing business)
as Siebert & Associates, Inc. and as The)
iFranchise Group, Inc., TOMMY D. PAYNE, DAN LEVY, LAURIE LUDES)
and JUDY JANUSZ,)
)
Defendants.)

MEMORANDUM OPINION AND ORDER

The five individual defendants move for attorneys' fees as prevailing parties respecting plaintiff's contract claims against them. On October 6, 2000, we held that plaintiff could not enforce noncompetition agreements against those defendants because of its material breach of its employment agreements with them, namely, a failure to pay them over extended periods their agreed compensation. Each Noncompetition Agreement provided as follows:

The parties hereto agree that the prevailing party in any action in connection with this Agreement shall be entitled to recover from the non-prevailing party all reasonable costs and expenses (including attorneys' fees) incurred in connection with such action.

Defendants contend that they have prevailed and are therefore entitled to reasonable costs and fees.

Plaintiff argues that defendants sought to cancel their obligations under the contracts, and thus they sought to avoid the contracts for some purposes and seek now to enforce it for others. They are, asserts plaintiff, disloyal employees who violated contract terms and then

No. 00 C 1248

successfully argued that the contracts are no longer binding. If the contracts have been invalidated they have been invalidated for all purposes. 1

We disagree. Plaintiff's contract claims were actions in connection with "this Agreement." Defendants prevailed. They had costs and fees in connection with those actions. They prevailed not because of any contention that there never had been any contracts or that they never had any contractual obligations. Rather, they prevailed because the contractual obligations had terminated because of plaintiff's material breach. Accordingly, they were not disloyal employees who violated contract terms. They are entitled to fees.

But what amount of fees? It is at this juncture that the requirements of LR 54.3 kick in. The parties are directed now to follow the procedures required by that rule.

May 17, 2001.

JAMES B. MORAN
Senior Judge, U. S. District Court

¹Plaintiff also asks for reconsideration of the summary judgments for defendants, which we deny, and point out that defendants have not followed LR 54.3, which we discuss *infra*.